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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,472	07/19/2001	R. Dean Stickler	9502.3805	7246

22235 7590 03/26/2003

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EXAMINER

SINGH, ARTI R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS 5

Office Action Summary

Applicati n No.

09/909,472

Applicant(s)

STICKLER, R. DEAN

Examiner

Ms. Arti Singh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07/19/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4, drawn to a disposable pad, classified in class 442, subclass 59+.
 - II. Claims 5-10, drawn to a disposable pad and its container, classified in class 224 in various subclasses.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the pad itself could be used for other purposes such as a disposable drip mat.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Barry Haley on 11/06/02 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,265,084. Although the conflicting claims are not identical, they are not patentably distinct from each other because they appear to be obvious variants of one another.

Specification

7. The disclosure is objected to because of the following informalities: At the beginning of the Specification (page 1) under the heading "Cross Reference To Related Applications", the continuity data needs to be updated as Application 09/119,204 has matured into U.S.P.N. 6,265,084. Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada JP-8-164094 in view of Iwahashi USPN 4,938,957 further in view of WO 98/22280 to Jenkins or Creamer USPN 4,125,656. Yamada teaches a toilet mat for wall urinals which is comprised of an underlying fluid impervious layer and an overlying absorbing layer which contains an antimicrobial and deodorizing agents. The shape of the mat may be adjusted for the size of the toilet and is depicted to be of rectangular shape for wall urinals.

While a deodorizing agent is not necessarily a fragrance agent, Iwahashi teaches that effective deodorizing agents are often one in the same (column 1, line 19- column 2, line 14 of '957). Thus, a person having ordinary skill in the art at the time the invention was made would have found it obvious to utilize a fragrance agent in the mat of Yamada, motivated by the ability to deodorize and make the urinal a better smelling place.

Yamada teaches what is set forth above but fails to teach his mat to be secured adhesively to the floor. WO/9822280 on page 11 paragraph 4, teach that a two-sided tape or an adhesive (page 15, paragraph 1) may be used to secure the pad to the floor. Alternatively, Creamer teaches a bathroom mat having an adhesive on its backside (column 2, lines 55-59 and column 4, lines 10-19). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have fabricated the mat of Yamada with the underlying adhesive of either Jenkins or Creamer, motivated by the reasoned expectation of keeping the disposable pad in place.

With regard to the limitation of claim 2, wherein Applicant desires a trapezoidal shape, Yamada discloses mats having a generally rectangular shape, which may be adjusted in


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terms of shape and size so that the dimensions optimally collect urinal drippings. Applicant's claim recites a generally trapezoidal shape. A skilled artisan would have found it obvious to have modified the shape of the pad so it would fit around the urinal or toilet, as generally speaking a trapezoidal shape would seemingly include a rectangular shape since a rectangle may differ from a trapezoid with only the slightest lengthening or shortening of one side of the rectangle. Additionally, the Examiner takes the stance that a person having ordinary skill in the art at the time the invention was made would have found it obvious to employed a trapezoidal shape as a matter of obvious design choice so that it may fit in front of a urinal, since such a modification would have involved a mere change in the size of the component. A change in shape or size is generally recognized as being within the level or ordinary skill in the art. See *In re Dailey MPEP 2144.04 357 F. 2nd 669 149 USPQ 1966*.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 8:00am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


3/24/03

Ms. Arti Singh
Patent Examiner
Art Unit 1771



FORM PTO-1449 (REV. 7-80)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY DOCKET NO. 9502.3805	SERIAL NO. 09/909,472
LIST OF PRIOR ART CITED BY APPLICANT (Use several sheets if necessary)		APPLICANT R. Dean Stickler	
		FILING DATE July 19, 2001	GROUP 1771

U.S. PATENT DOCUMENTS

* EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB CLASS	FILING DATE IF APPROPRIATE
ARS	AB	5156043	10/29/92	Leong et al	-	-	-
ARS	AC	4022669	4/10/09	Boza	-	-	-
ARS	AD	6265004	7/24/01	Stickler	-	-	-
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB CLASS	TRANSLATION YES NO
ARS	AG	20902220	20/5/98	WIPO/PT	-	-	- -
ARS	AH	164094		Japan	-	-	- -
	AI						
	AJ						
	AK						

OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)

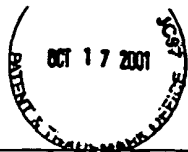
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw if not in conformance and not considered. Include copy of this form with application.

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APPLICANT

R. Dean Stickler

FILING DATE

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GROUP

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U.S. PATENT DOCUMENTS

* EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB CLASS	FILING DATE IF APPROPRIATE
ARS	AB	5506040	4/9/76	Cordani	-	-	-
ARS	AC	4125656	11/14/78	Creamer	-	-	-
ARS	AD	4013944	3/2/89	Honey, et al	-	-	-
ARS	AA	2097108	7/20/59	Harwood	-	-	-
ARS	AB	4938957	7/3/90	Iwakashi	-	-	-
ARS	AC	2707352	5/3/55	Fischer	-	-	-
ARS	AD	4604562	8/4/87	Hartkemeyer	-	-	-
ARS	AE	5439458	8/2/95	Noel, et al	-	-	-
ARS	AF	4205075	8/25/61	Nelson	-	-	-

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB CLASS	TRANSLATION YES NO
	AG						
	AH						
	AI						
	AJ						
	AK						

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